

## HOUSE BILL NO. 729

INTRODUCED BY B. OLSON

A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING A 4 PERCENT SALES TAX ON PREPARED FOOD; PROVIDING A DEFINITION OF "PREPARED FOOD"; PROVIDING THAT A PORTION OF THE SALES TAX COLLECTED ON PREPARED FOOD BE DISTRIBUTED TO THE COUNTY OR MUNICIPALITY IN WHICH THE TAX IS COLLECTED; REQUIRING THAT A PORTION OF THE TAX DISTRIBUTED TO A COUNTY OR MUNICIPALITY BE USED FOR PROPERTY TAX RELIEF; PROVIDING FOR OTHER USES OF THE REVENUE DISTRIBUTED TO A COUNTY OR MUNICIPALITY; PROVIDING THAT A COUNTY OR MUNICIPALITY REIMBURSE THE STATE FOR OVERCOLLECTIONS OF THE TAX; PROVIDING A STATUTORY APPROPRIATION; PROVIDING A TRANSITION PERIOD RELATED TO USING SALES TAX REVENUE FOR PROPERTY TAX RELIEF; AMENDING SECTIONS 15-68-101, 15-68-102, 15-68-525, 15-68-820, AND 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Distribution of sales taxes to local governments -- appropriation.** (1)

For each calendar quarter, the department shall determine the amount of tax, penalty, and interest collected on prepared food.

(2) Within 30 days following the receipt of taxes collected on prepared food, the department shall remit from the account in the state special revenue fund as provided in 15-68-820, 50% of the tax collected on prepared food within the county or incorporated municipality, including penalty and interest, to the county or the incorporated municipality in which the tax was collected.

(3) The amounts determined under this section are statutorily appropriated, as provided for in 17-7-502, to the department for distribution to counties and incorporated municipalities.

**NEW SECTION. Section 2. Use of sales tax revenue.** (1) Annually anticipated receipts from sales tax revenue received as provided in [section 1] must be applied to reduce the local government's property tax levy for the fiscal year in an amount equal to at least 50% of the amount of the sales tax revenue received during

1 the preceding fiscal year.

2 (2) The local government may use the remaining sales tax revenue for any activity, undertaking, or  
3 administrative service that the local government is authorized by law to perform.

4  
5 **Section 3.** Section 15-68-101, MCA, is amended to read:

6 **"15-68-101. Definitions.** For purposes of this chapter, unless the context requires otherwise, the  
7 following definitions apply:

8 (1) (a) "Accommodations" means a building or structure containing individual sleeping rooms or suites  
9 that provides overnight lodging facilities for periods of less than 30 days to the general public for compensation.

10 (b) Accommodations includes a facility represented to the public as a hotel, motel, campground, resort,  
11 dormitory, condominium inn, dude ranch, guest ranch, hostel, public lodginghouse, or bed and breakfast facility.

12 (c) The term does not include a health care facility, as defined in 50-5-101, any facility owned by a  
13 corporation organized under Title 35, chapter 2 or 3, that is used primarily by persons under 18 years of age for  
14 camping purposes, any hotel, motel, hostel, public lodginghouse, or bed and breakfast facility whose average  
15 daily accommodation charge for single occupancy does not exceed 60% of the amount authorized under  
16 2-18-501 for the actual cost of lodging for travel within the state of Montana, or any other facility that is rented  
17 solely on a monthly basis or for a period of 30 days or more.

18 (2) (a) "Admission" means payment made for the privilege of being admitted to a facility, place, or event.

19 (b) The term does not include payment for admittance to a movie theater or to a sporting event  
20 sanctioned by a school district, college, or university.

21 (3) (a) "Base rental charge" means the following:

22 (i) charges for time of use of the rental vehicle and mileage, if applicable;

23 (ii) charges accepted by the renter for personal accident insurance;

24 (iii) charges for additional drivers or underage drivers; and

25 (iv) charges for child safety restraints, luggage racks, ski racks, or other accessory equipment for the  
26 rental vehicle.

27 (b) The term does not include:

28 (i) rental vehicle price discounts allowed and taken;

29 (ii) rental charges or other charges or fees imposed on the rental vehicle owner or operator for the  
30 privilege of operating as a concessionaire at an airport terminal building;

1 (iii) motor fuel;

2 (iv) intercity rental vehicle drop charges; or

3 (v) taxes imposed by the federal government or by state or local governments.

4 (4) (a) "Campground" means a place used for public camping where persons may camp, secure tents,  
5 or park individual recreational vehicles for camping and sleeping purposes.

6 (b) The term does not include that portion of a trailer court, trailer park, or mobile home park intended  
7 for occupancy by trailers or mobile homes for resident dwelling purposes for periods of 30 consecutive days or  
8 more.

9 (5) "Engaging in business" means carrying on or causing to be carried on any activity with the purpose  
10 of receiving direct or indirect benefit.

11 (6) (a) "Lease", "leasing", or "rental" means any transfer of possession or control of tangible personal  
12 property for a fixed or indeterminate term for consideration. A lease or rental may include future options to  
13 purchase or extend.

14 (b) Lease or rental includes agreements covering motor vehicles and trailers when the amount of  
15 consideration may be increased or decreased by reference to the amount realized upon sale or disposition of  
16 the property, as defined in 26 U.S.C. 7701(h)(1).

17 (c) The term does not include:

18 (i) a transfer of possession or control of property under a security agreement or deferred payment plan  
19 that requires the transfer of title upon completion of the required payments;

20 (ii) a transfer of possession or control of property under an agreement that requires the transfer of title  
21 upon completion of required payments and payment of an option price that does not exceed the greater of \$100  
22 or 1% of the total required payments; or

23 (iii) providing tangible personal property with an operator if an operator is necessary for the equipment  
24 to perform as designed and not just to maintain, inspect, or set up the tangible personal property.

25 (d) This definition must be used for sales tax and use tax purposes regardless of whether a transaction  
26 is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code,  
27 the Montana Uniform Commercial Code, or other provisions of federal, state, or local law.

28 (e) This definition must be applied only prospectively from the date of adoption and has no retroactive  
29 impact on existing leases or rentals.

30 (7) (a) "Motor vehicle" means a light vehicle as defined in 61-1-139, a motorcycle as defined in

61-1-105, a motor-driven cycle as defined in 61-1-106, a quadricycle as defined in 61-1-133, a motorboat or a sailboat as defined in 23-2-502, or an off-highway vehicle as defined in 23-2-801 that:

- (i) is rented for a period of not more than 30 days;
- (ii) is rented without a driver, pilot, or operator; and
- (iii) is designed to transport 15 or fewer passengers.

(b) Motor vehicle includes:

- (i) a rental vehicle rented pursuant to a contract for insurance; and
- (ii) a truck, trailer, or semitrailer that has a gross vehicle weight of less than 22,000 pounds, that is rented without a driver, and that is used in the transportation of personal property.

(c) The term does not include farm vehicles, machinery, or equipment.

(8) "Permit" or "seller's permit" means a seller's permit as described in 15-68-401.

(9) "Person" means an individual, estate, trust, fiduciary, corporation, partnership, limited liability company, limited liability partnership, or any other legal entity.

(10) (a) "Prepared food" means food sold by a retailer in the following manner:

(i) food products and beverages, except alcoholic beverages subject to tax under Title 16, served as meals on or off the premises of the retailer;

(ii) food products and beverages, except alcoholic beverages subject to tax under Title 16, furnished, prepared, or served for consumption at tables, chairs, or counters or from trays, glasses, dishes, or other tableware, whether provided by the retailer or by a person with whom the retailer contracts to furnish, prepare, or serve food products to others;

(iii) food products sold for immediate consumption, even though the products are sold on a "takeout", "to go", or "U-bake" order and are actually packaged or wrapped and taken from the premises of the retailer.

(b) The term does not include:

(i) the sale of food or a food service offered or delivered as part of a residential living arrangement and consumed by a person who is party to the arrangement; or

(ii) food or drink vended by or through machines on behalf of a vendor.

(c) For the purposes of this subsection (10), the term "retailer" means establishments that sell prepared food and that are enumerated in the North American Industry Classification System Manual (NAICS), prepared by the United States office of management and budget, as the accommodations subsector (NAICS subsector 721) or the food services and drinking places subsector (NAICS subsector 722).

~~(10)~~(11) "Purchaser" means a person to whom a sale of personal property is made or to whom a service is furnished.

~~(11)~~(12) "Rental vehicle" means a motor vehicle that is used for or by a person other than the owner of the motor vehicle through an arrangement and for consideration.

~~(12)~~(13) "Retail sale" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.

~~(13)~~(14) "Sale" or "selling" means the transfer of property for consideration or the performance of a service for consideration.

~~(14)~~(15) (a) "Sales price" applies to the measure subject to sales tax and means the total amount or consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented or valued in money, whether received in money or otherwise, without any deduction for the following:

(i) the seller's cost of the property sold;

(ii) the cost of materials used, labor or service costs, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

(iii) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

(iv) delivery charges;

(v) installation charges;

(vi) the value of exempt personal property given to the purchaser when taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise; and

(vii) credit for any trade-in.

(b) The amount received for charges listed in subsections ~~(14)(a)(iii)~~ (15)(a)(iii) through ~~(14)(a)(vii)~~ (15)(a)(vii) are excluded from the sales price if they are separately stated on the invoice, billing, or similar document given to the purchaser.

(c) The term does not include:

(i) discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(ii) interest, financing, and carrying charges from credit extended on the sale of personal property or services if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

1 or

2 (iii) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of  
3 sale, or similar document given to the purchaser.

4 (d) In an exchange in which the money or other consideration received does not represent the value  
5 of the property or service exchanged, sales price means the reasonable value of the property or service  
6 exchanged.

7 (e) When the sale of property or services is made under any type of charge or conditional or time-sales  
8 contract or the leasing of property is made under a leasing contract, the seller or lessor shall treat the sales price,  
9 excluding any type of time-price differential, under the contract as the sales price at the time of the sale.

10 ~~(15)~~(16) "Sales tax" and "use tax" mean the applicable tax imposed by 15-68-102.

11 ~~(16)~~(17) "Seller" means a person that makes sales, leases, or rentals of personal property or services.

12 ~~(17)~~(18) (a) "Service" means an activity that is engaged in for another person for consideration and that  
13 is distinguished from the sale or lease of property. Service includes activities performed by a person for its  
14 members or shareholders.

15 (b) In determining what a service is, the intended use, principal objective, or ultimate objective of the  
16 contracting parties is irrelevant.

17 ~~(18)~~(19) "Use" or "using" includes use, consumption, or storage, other than storage for resale or for use  
18 solely outside this state, in the ordinary course of business."

19  
20 **Section 4.** Section 15-68-102, MCA, is amended to read:

21 **"15-68-102. Imposition and rate of sales tax and use tax -- exceptions.** (1) A sales tax of the  
22 following percentages is imposed on sales of the following property or services:

23 (a) 3% on accommodations and campgrounds;

24 (b) 4% on the base rental charge for rental vehicles; and

25 (c) 4% on prepared food.

26 (2) The sales tax is imposed on the purchaser and must be collected by the seller and paid to the  
27 department by the seller. The seller holds all sales taxes collected in trust for the state. The sales tax must be  
28 applied to the sales price.

29 (3) (a) For the privilege of using property or services within this state, there is imposed on the person  
30 using the following property or services a use tax equal to the following percentages of the value of the property

1 or services:

2 (i) 3% on accommodations and campgrounds;

3 (ii) 4% on the base rental charge for rental vehicles; and

4 (iii) 4% on prepared food.

5 (b) The use tax is imposed on property or services that were:

6 (i) acquired outside this state as the result of a transaction that would have been subject to the sales  
7 tax had it occurred within this state;

8 (ii) acquired within the exterior boundaries of an Indian reservation within this state as a result of a  
9 transaction that would have been subject to the sales tax had it occurred outside the exterior boundaries of an  
10 Indian reservation within this state;

11 (iii) acquired as the result of a transaction that was not initially subject to the sales tax imposed by  
12 subsection (1) or the use tax imposed by subsection (3)(a) but which transaction, because of the buyer's  
13 subsequent use of the property, is subject to the sales tax or use tax; or

14 (iv) rendered as the result of a transaction that was not initially subject to the sales tax or use tax but that  
15 because of the buyer's subsequent use of the services is subject to the sales tax or use tax.

16 (4) For purposes of this section, the value of property must be determined as of the time of acquisition,  
17 introduction into this state, or conversion to use, whichever is latest.

18 (5) The sale of property or services exempt or nontaxable under this chapter is exempt from the tax  
19 imposed in subsections (1) and (3).

20 ~~(6) Lodging facilities and campgrounds are exempt from the tax imposed in subsections (1)(a) and~~  
21 ~~(3)(a)(i) until October 1, 2003, for contracts entered into prior to April 30, 2003, that provide for a guaranteed~~  
22 ~~charge for accommodations or campgrounds."~~

23  
24 **Section 5.** Section 15-68-525, MCA, is amended to read:

25 **"15-68-525. Refunds -- interest -- limitations.** (1) A claim for a refund or credit as a result of  
26 overpayment of taxes collected under this chapter must be filed within 5 years of the date that the return was  
27 due, without regard to any extension of time for filing.

28 (2) (a) The amount of an overpayment credited against any tax, penalty, or interest due on prepared  
29 food for any tax period or any refund or portion of a refund, which has not been distributed pursuant to [section  
30 1], must be withheld from the current distribution made pursuant to [section 1].

(b) If the amount of the refund reduces the amount of tax previously distributed pursuant to [section 1] and if the current distribution, if any, is insufficient to offset the refund, then the department shall demand the amount of the refund from the county or incorporated municipality to which the tax was originally distributed. The county treasurer or the municipal finance administrator of the municipality shall remit the amount demanded within 30 days of the receipt of notice from the department.

~~(2)(3)~~ (a) Interest paid by the department on an overpayment must be paid or credited at the same rate as the rate charged on delinquent taxes under 15-1-216.

(b) Except as provided in subsection ~~(2)(e)~~ (3)(c), interest must be paid from the date that the return was due or the date of overpayment, whichever is later. Interest does not accrue during any period in which the processing of a claim is delayed more than 30 days because the taxpayer has not furnished necessary information.

(c) The department is not required to pay interest if:

(i) the overpayment is refunded or credited within 6 months of the date that a claim was filed; or

(ii) the amount of overpayment and interest does not exceed \$1.

(4) For the purposes of subsection (2)(b), the term "municipal finance administrator" means the individual responsible for the financial administration of the municipality and generally means the city treasurer or town clerk unless the governing body specifies a different individual."

**Section 6.** Section 15-68-820, MCA, is amended to read:

**"15-68-820. Sales tax and use tax proceeds.** (1) All Except as provided in subsection (2), all money collected under this chapter must be deposited by the department into the general fund.

(2) Fifty percent of all money collected on prepared food must be deposited in the state general fund and 50% must be deposited in an account in the state special revenue fund for distribution as provided in [section 1]."

**Section 7.** Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both



1 of the following provisions:

2 (a) The law containing the statutory authority must be listed in subsection (3).

3 (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory  
4 appropriation is made as provided in this section.

5 (3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105;  
6 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706;  
7 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; [section 1]; 15-70-101; 16-11-404; 17-3-106; 17-3-212;  
8 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512;  
9 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409;  
10 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102;  
11 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214;  
12 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and  
13 90-9-306.

14 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,  
15 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued  
16 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana  
17 to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state  
18 treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory  
19 appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of  
20 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360,  
21 L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's  
22 unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates  
23 July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 2 and 5, Ch. 481, L. 2003, the inclusion  
24 of 90-6-710 terminates June 30, 2005; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch.  
25 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; and pursuant to sec. 135, Ch. 114, L. 2003,  
26 the inclusion of 2-15-151 terminates June 30, 2005.)"

27  
28 **NEW SECTION. Section 8. Transition.** Notwithstanding the provisions of [section 2], a county or  
29 incorporated municipality must use 25% of the revenue anticipated from the distribution under [section 1] in fiscal  
30 year 2006 to reduce property taxes.

1

2        **NEW SECTION.** **Section 9. Codification instruction.** (1) [Section 1] is intended to be codified as an  
3 integral part of Title 15, chapter 68, part 8, and the provisions of Title 15, chapter 68, part 8, apply to [section 1].

4        (2) [Section 2] is intended to be codified as an integral part of Title 7, chapter 6, part 40, and the  
5 provisions of Title 7, chapter 6, part 40, apply to [section 2].

6

7        **NEW SECTION.** **Section 10. Effective date.** [This act] is effective on passage and approval.

8

9        **NEW SECTION.** **Section 11. Applicability.** [This act] applies to the sale of prepared food on or after  
10 July 1, 2005.

11

- END -